

Legal Regime of Pawnbroker Activity

Decree-Law nº 160/2015, August 11

1 - What is the procedure for accessing and exercising the pawnbroker activity?

The access and exercise of the lending activity is subject to authorization request.

2 - What is meant by pawnbroker activity?

The lending activity consists of an activity of a loan guaranteed by a pledge.

3 - What does the authorization request consist of?

The authorization request is a procedure that begins with a request from the economic operator, in a specific form, completed and submitted at the entrepreneur's desk (BdE).

The authorization procedure leads to obtaining an administrative permission, to be granted by the Directorate-General for Economic Activities (DGAE), after verification of the requirements for access to the activity.

4 - What are the requirements for the granting of authorization to engage in the activity of pawnbroker?

The requirements for the granting of authorization to engage in the activity of lender are the suitability of the lender company and the contracting of compulsory insurance in the amount of EUR 100,000.00.

5 - What are the eligibility requirements?

The following situations determine the non-suitability of the natural or legal person:

- a) To have been declared insolvent by judicial decision in the last five years, to be in the process of liquidation, dissolution or cessation of activity, subject to any preventive means of liquidating assets or in any similar situation, or to have one's respective proceedings pending, except when one is covered by a special company recovery plan, system of company recovery by extrajudicial means, or extrajudicial conciliation procedure, under the legislation in force;
- b) To have been convicted, with pending trial, for the practice of one of the following crimes, provided that they are punishable by imprisonment for more than six months:

Crimes against property;

Crime of trafficking precious metals or gems;

Crime of criminal association;

Drug trafficking crime;

Money laundering crime;

Crime of harmful administration or active corruption;

Forgery crimes;

Crime of influence peddling;

Tax or customs crimes under the General Regime of Tax Infractions (RGIT), approved by Law 15/2001 of June 5;

Crimes under the Industrial Property Code

c) To have been convicted, pending trial, of the practice of unlawful or unfair competition;

d) To be inhibited from exercising trade, whatever the cause that determines it.

The eligibility of the legal person is determined by verification of any of the circumstances provided for in the previous paragraph with respect to its directors, directors or managers. The eligibility requirements are of permanent verification; therefore, their lack of supervision implies the expiry of the certificate of authorization reported on the date of its verification.

6 - What happens in cases of supervening lack of eligibility?

It implies the forfeiture of the authorization title reported on the date of the verification of the circumstance that determines the good repute of the natural or legal person

7 - What are the minimum conditions of the liability insurance contract?

The compulsory insurance is intended to transfer liability to an insurance company in the event of loss, loss, theft, robbery or fire of things given as security.

The amount of the insured capital must be at least EUR 100,000.00 and must be updated in each calendar year by the result of the average of the valuations made in the previous calendar year, when this average is greater than EUR 100,000.00.

8 - What situations/changes must be communicated to the DGAE?

Natural or legal persons who have an authorization title to exercise the activity must notify the DGAE, within 30 days of its occurrence, of any of the following situations:

a) amendments to the insurance contract;

b) Change of directors, officers or managers, in the case of a legal person, accompanied by proof of suitability;

c) Changes in the commercial name, legal nature and headquarters or tax domicile.

The opening of new establishments, by any form of commercial representation, by an authorized pawnbroker, is subject to the submission of a mere prior notification, which contains:

a) The elements referred to in a) and f) of no. 1 of article 4 of Decree-Law nº 160/2015 of 11 August;

b) Proof of the update of the insured capital.

The closure of establishments shall be subject to notification within a maximum period of 60 days after its occurrence.

All communications mentioned are established through the Entrepreneur's Desk

9 - What are the duties of the pawnbroker?

- a) They must prove to the DGAE, annually, through the "Balcão do empreendedor", the renewal of the insurance contract;
- b) They must have a complaint book;
- c) The following documents must be clearly displayed in a visible place in each establishment where the activity is carried out and with legible characters:
 - Copy of the authorization to exercise the activity;
 - Indication of the rates relating to valuation and remuneration interest;
 - Proof that the weighing instruments comply with the mandatory inspections;
 - Proof that the compulsory insurance is valid;
 - Daily quotation of gold and other precious metals, according to the London Bullion Market Association (LBMA);
 - Table of legal punch marks, printed by "Contrastaria Nacional"
- d) The pawnbroker who display and sell to the public articles with used precious metal purchased at auction for sales of goods given in pledge must comply with the provisions of the legal regime of goldsmiths and silversmiths and their complementary legislation.

In the event of termination of activity at the pawnbroker's initiative, the pawnbroker must:

- a) Promote this through an advertisement in one of the most widely read local newspapers and, when available, on its website;
- b) Post a notice on the door of the establishment;
- c) Notify all borrowers in writing, by e-mail or by registered letter.

10 - Which rules are applicable to the loan agreement secured by pledge?

The loan agreement secured by pledge shall:

- a) Be reduced to writing, in a clear, precise and legible manner, made in two copies and signed by both parties, one of which shall remain in the possession of the lender, which shall be referred to as "pledge bond", the other being referred to as "pledge caution", intended for the borrower.
- b) The contract shall identify the contracting parties with mention of the borrower's name, residence, civil identification number and tax identification number, as well as a detailed description of the things pledged.
- c) Contain the following elements:
 - The value of the valuation;
 - The valuation fee and the amount charged for it;
 - The amount lent;
 - The interest rate;
 - The start and end date of the contract;
 - The rules of compensation in the event of loss, theft, robbery or fire of things given in pledge;

- The conditions of repayment of the loan;
 - Information on the possibility of selling the item at auction in case of delay for more than three months;
 - The conditions of redemption of the things given in pledge.
 - The rules for the allocation of the remainder of the sale of the thing given in pledge.
 - Information to the borrower that the security of pledge can only be transferred to third parties upon prior knowledge of the lender of the identification details of the new holder.
- d) The draft contract shall provide fields for the optional indication of the lender's e-mail address and the borrower's bank identification number (IBAN) for the purpose of returning the remainder of the sale of the pledged item;
- e) The conclusion of a loan agreement secured by pledge with a person deemed incapable under the terms of the Civil Code is prohibited.

11 – How is the sale of items given in pledge carried out?

- a) In case of delay for more than three months, the pledged item may be sold at auction or by direct sale to entities that, by legal determination, are entitled to purchase certain assets.
- b) Auction sales are advertised through the publication of an advertisement in one of the most widely read newspapers in the locality, the posting of notices at the door of the pawnbroker 's establishment and, where available, the publication of an advertisement on its website, at least 10 days in relation to the day of sale and indicating the following information:
- Place, day and time of the auction;
 - Place and date when items given in pledge will be displayed or can be examined;
 - Indication that the sale refers to goods that guarantee loans and that on the date have interest due and not paid for more than three months.

12 - Which rules apply to the auctioning of items given in pledge?

The rules applicable to the holding of auctions of items given as security are as follows:

- a) The public shall be allowed to examine the items to be auctioned at least during the two hours preceding it.
- b) The sale shall take place on the day and time designated in the sale announcements, in the presence of ASAE, to whom the contracts for the goods to be auctioned must be made available, as well as the map with the list of goods to be auctioned, containing the contract number, the weight and touch of the precious metal, when items with used precious metal are involved, the value of the valuation and also spaces for recording the value of the sale and identification of the buyer.
- c) The sale is public and all interested parties, including the pawnbroker may bid.
- d) The pawnbroker bidding on the sale of any items given in pledge shall be subject to compliance with all the conditions of sale, except for the deposit of the price.
- e) The base bidding value of items on sale may not be less than the value of the valuation.

- f) The items given in pledge shall be awarded to the person who has made the highest bid and upon deposit of the respective value.
- g) The non-existence of any purchase bid determines that the things in question are relegated to another sale at auction.
- h) The provisions of the preceding subparagraph shall not apply in the absence of any purchase bid in two consecutive auctions.

13 - What are the obligations after the sale?

Upon completion of the sale process, the lender is obliged, within 30 days thereafter, to draw up a summary statement of the sale containing the following information on the goods sold:

- a) Contract number;
- b) Identification of the borrower;
- c) Description of the items;
- d) Photographs in colour of things when dealing with items with used precious metal;
- e) Value of the individual valuation of things that are part of the contract;
- f) Initial amount lent;
- g) Amount outstanding at the date of sale with a breakdown of capital, interest and sale rate;
- h) Value obtained from the sale;
- i) Value of the remaining items, if any;
- j) Amount outstanding, if any;
- k) Identification of the buyer;
- l) Means of payment used in the acquisition, including cheque number, bank transfer number, or payment by electronic means.

14 - The following facts, among others, constitute an administrative offence, liable to a fine:

- a) Exercising an activity without authorization or without compulsory insurance;
- b) Failing to inform the DGAE of the situations/modifications subject to this procedure;
- c) Not having the required books;
- d) Failing to notify the DGAE the opening of new establishments;
- e) Not reporting cessation of activity

The initiation and prosecution of administrative offences are the responsibility of the Food and Economic Security Authority (ASAE), the inspector general of which is responsible for imposing fines and ancillary penalties.

15 - When did the legal regime of pawnbroker activity come into force?

The legal regime of pawnbroker activity came into force on 4th November 2015.